



OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209-AA58

Post-Employment Conflict of Interest Restrictions; Departmental Component Designations

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: The U.S. Office of Government Ethics (OGE) is issuing this final rule to revise the component designations of one agency for purposes of the one-year post-employment conflict of interest restriction for senior employees. Specifically, based on the recommendation of the Department of Defense, OGE is designating one new component to its regulations.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background

The Director of OGE (Director) is authorized by 18 U.S.C. 207(h) to designate distinct and separate departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c), the one-year post-employment conflict of interest restriction for senior employees. Under 18 U.S.C. 207(h)(2), component designations do not apply to persons employed at a rate of pay specified in or fixed according to subchapter II of 5 U.S.C. chapter 53 (the Executive Schedule). Component designations are listed in appendix B to 5 CFR part 2641.

The representational bar of 18 U.S.C. 207(c) usually extends to the whole of any department or agency in which a former senior employee served in any capacity during the year prior to termination from a senior employee position. However, 18 U.S.C. 207(h) provides that whenever the Director determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate component of that department or agency.

Pursuant to the procedures prescribed in 5 CFR 2641.302(e), the Department of Defense (DoD) forwarded a written request to OGE to amend its listing in appendix B to part 2641, and on December 1, 2020, OGE published a proposed rule in the FEDERAL REGISTER that proposed to designate the Defense Advanced Research Projects Agency (DARPA) as a separate component of DoD for purposes of 18 U.S.C. 207(c). The proposed rule provided a 30-day comment period, which ended on December 31, 2020.

OGE did not receive any comments. The rationale for the rule, which OGE is now adopting as final, is explained in the proposed rule preamble at 85 FR 77014.

For the reasons stated in the preamble to the proposed rule, OGE is granting the request of the DoD to amend its listing to designate DARPA as a distinct and separate component of the agency for purposes of 18 U.S.C. 207(c). As indicated in 5 CFR 2641.302(f), a designation “shall be effective on the date the rule creating the designation is published in the FEDERAL REGISTER and shall be effective as to individuals who terminated senior service either before, on or after that date.” Initial designations in appendix B to part 2641 were effective as of January 1, 1991. The effective date of subsequent designations is indicated by means of parenthetical entries in appendix B. The new component designation made in this rule for DARPA is effective on the date the final rule is published in the FEDERAL REGISTER.

II. Matters of Regulatory Procedure

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule will not have a significant economic impact on a substantial number of small entities because it affects only Federal departments and agencies and current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this final rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The final rule is not a major rule as defined in 5 U.S.C. chapter 8, Congressional Review of Agency Rulemaking.

Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. In promulgating this final rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in Executive Orders 12866 and 13563. This rule has not been reviewed by the Office of Management and Budget under Executive Order 12866 because it is not a “significant” regulatory action for the purposes of that order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: March 31, 2021.

Emory Rounds,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2641 as set forth below:

**PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST
RESTRICTIONS**

1. The authority citation for part 2641 continues to read as follows:

Authority: 5 U.S.C. app. (Ethics in Government Act of 1978); 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Amend appendix B to part 2641 by revising the listing for the Department of Defense to read as follows:

Appendix B to Part 2641 – Agency Components for Purposes of 18 U.S.C. 207(c)

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Parent: Department of Defense

Components:

Defense Advanced Research Projects Agency (DARPA) (effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]).

Department of the Air Force.

Department of the Army.

Department of the Navy.

Defense Information Systems Agency.

Defense Intelligence Agency.

Defense Logistics Agency.

Defense Threat Reduction Agency (effective February 5, 1999).

National Geospatial-Intelligence Agency (formerly National Imagery and Mapping Agency) (effective May 16, 1997).

National Reconnaissance Office (effective January 30, 2003).

National Security Agency.

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